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IN THE

Supreme Court of the United States

October Term, 1965.

No. 322.

HAROLD A. STEVENSON, et al.,
Petitioners,

v.

LOUIS SILVERMAN, et al.,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The Chancellor's Opinion (R. 24a-26a) is not reported. The Opinion of the Supreme Court of Pennsylvania in the instant case (Pet. App. A) is reported at 417 Pa. 187 (1965).[1]

1. The disposition of this case by the courts below derives from an earlier case. The trial court's opinions in that first case are set forth at R. 36a-72a and R. 73a-79a. The Opinion of the Supreme Court of Pennsylvania in the first case is set forth at R. 80a-86a and is reported at 412 Pa. 478 (1963).

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania was entered on March 16, 1965, and the Petition for Reargument was denied on April 16, 1965. The petition for a writ of certiorari was filed on July 7, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Whether the Supreme Court of Pennsylvania erred in refusing to permit the relitigation of an adverse possession suit where the second suit was identical in all critical respects with the first except that the plaintiff added to the caption the names of members of his family who had in fact participated in the first suit.

STATEMENT.

In June 1959, Harold Stevenson filed suit seeking a declaratory judgment that he was the owner by adverse possession of a 64-acre tract of land in Philadelphia (R. 27a-35a). A 24-day trial was held and testimony covering more than 4,000 pages of record was heard by the Chancellor (R. 38a).

In his petition, Stevenson had alleged that he personally had been in "actual, continuous, exclusive, visible, notorious, distinct, and hostile adverse possession" of the land since September 19, 1928 (R. 30a). However, as explained by the Chancellor in that case, at the trial Stevenson "* * * changed his position and definitely relied on the theory of tacking and he made no claim that he alone was in continuous possession of the land. His theory at trial was that first he, then daughter and son-in-law, then his son and finally he again occupied the land" (R. 56a).

In support of this contention, Stevenson offered his own testimony, and the testimony of the individual members of his family as noted by the Chancellor. The Chancellor rejected the contention and held that "* * * it is clear that even under the plaintiff's theory of tacking, he and his privies failed to maintain continuous and uninterrupted possession of the land" (R. 56a).[2] This holding was fully supported by extended specific findings of fact (R. 40a-47a), including the finding that "* * * [m]any disinterested witnesses proved that there was no visible possession by plaintiff or his privies during the years 1930 to 1936, 1946, 1947 and 1948" (R. 47a).

On October 9, 1963, these findings by the Chancellor were approved by the Supreme Court of Pennsylvania (R. 83a-85a). Once again, it was made clear that the claim under adjudication was one of adverse possession, by "tacking" by Stevenson and "* * * his privies (members of his immediate family)" (R. 83a). Describing the issue as "* * * purely factual * * *" (R. 84a), the Supreme Court of Pennsylvania concluded that there was "* * * no meritorious reason to interfere with the findings in this case" (R. 85a).

On February 19, 1964, the suit here involved was instituted (R. 2a). This time, the petition for a declaratory judgment (R. 4a-20a) formally alleged the theory upon which the first suit had actually been tried and decided, namely the contention that one or another of the members of Stevenson's family had been in possession of the tract throughout the 21-year period and that, on the theory of "tacking", the Stevenson family was entitled to be declared owners of the tract (R. 4a-6a, 13a-16a). In an effort to differentiate this new suit from the first suit, Stevenson formally joined, as named plaintiffs, his wife, his daughter

2. There were other grounds for the Chancellor's rejection of Stevenson's claim, such as failure to prove hostile possession (R. 56a) and the failure to carry the burden of proving that the possession was notorious, open or visible (R. 64a-65a).

and former son-in-law, and his son and daughter-in-law. The members of Stevenson's family—who had been described by the Supreme Court of Pennsylvania in the first suit as Stevenson's "privies" (R. 83a)—had testified in the first suit in support of Stevenson's claim that, in combination, they had occupied the tract for the prescriptive period (R. 22a) and their testimony had been the subject of specific Findings by the Chancellor in that suit (*e.g.*, R. 47a).

On July 31, 1964, this second suit was dismissed on the ground that it was barred by the principle of *res adjudicata* (R. 24a-26a) and, on March 16, 1965, this decision was affirmed by the Supreme Court of Pennsylvania (Pet. App. pp. 10-13). In an opinion for a unanimous court, Mr .Justice Eagen stated (Pet. App. pp. 11-13):

> "The members of Stevenson's family, who are now added as parties-plaintiff, were treated and considered by the lower court in the first proceeding as acting in privity with him. On appeal, this Court considered and determined the issue on the same basis. The interest of each and every one was involved and adjudicated. The record permitted no other reasoning. All members of the family had a mutual interest in the action, were present, and joined and participated fully in the prosecution of the litigation. It was an endeavor by, for and on behalf of each and every one. On no other theory could the plaintiff's case have prevailed. Not only was it necessary for the plaintiff to establish that the successive occupants had possessed the property for the full statutory period, but also that privity existed among them. Privity among the adverse possessors was a necessary link to the establishment of the claim. See, *Graffius v. Tottenham*, 1 W. & S. 488 (1841); *Watson v. Gregg*, 10 Watts 289 (1840); *Stark v. Lardin*, 133 Pa. Superior Ct. 96, 1 A. 2d 794 (1938); and, 2 C. J. S. Adverse Possession § 129 (1936).

"The doctrine of res judicata is based on public policy and seeks to prevent an individual from being vexed twice for the same cause. If any case calls for its application, this is it. As pertinently stated in *Hochman v. Mortgage Fin. Corp.*, 289 Pa. 260, 263, 137 A. 252, 253 (1927): 'The rule should not be defeated by minor differences of form, parties or allegations, when these are contrived only to obscure the real purpose,—a second trial on the same cause between the same parties. The thing which the court will consider is whether the ultimate and controlling issues have been decided in a prior proceeding in which *the present parties actually had an opportunity to appear and assert their rights.* If this be the fact, then the matter ought not to be litigated again, nor should the parties, by a shuffling of plaintiffs on the record, or by change in the character of the relief sought, be permitted to nullify the rule.' (Emphasis supplied.)

"The cause and rights of all involved have been determined finally. The case should at long last rest in peace."

Argument.

There are occasions upon which it can be seriously contended that application of the doctrine of *res judicata* gives rise to problems of due process. *Cf.* **Hansberry v. Lee**, 311 U. S. 32 (1940). But the instant case presents no such occasion. To the contrary, as Justice Eagen remarked in the opinion below, if any case ever called for the application of the doctrine of *res judicata*, "* * * this is it" (Pet. App. p. 12).

The conclusion reached by Justice Eagen is compelled by any candid and fair examination of the course of the two adverse possession lawsuits here involved. However, in an attempt to undermine this conclusion, petitioners place before this Court an entirely misleading version of that course of events.

It is true that the initial pleading in the first adverse possession suit alleged continuous adverse possession by Harold A. Stevenson alone. But, contrary to the inference contained in the petition (Pet. p. 3), it is not true that the first suit was tried on this limited basis. Whether or not formal amendments to the pleadings were allowed, the first suit was not decided on the basis of a variance between pleading and proof. To the contrary, the first suit was fully tried on the theory of "tacking" and evidence of "tacking" was considered and rejected on the merits. As the Chancellor there stated (R. 56a):

> "* * * We need not decide, however, whether this variance between the allegata and the probata is fatal to plaintiff's claim since it is clear that even under the plaintiff's theory of tacking, he and his privies failed to maintain continuous and uninterrupted possession of the land."

Second, there is no justification for the suggestion by petitioners (Pet. pp. 4-5) that members of the Stevenson

family were designated as Harold A. Stevenson's "privies" for the first time in the second suit. They were referred to throughout the first suit as his "privies" and were specifically described as "privies" by the Supreme Court of Pennsylvania in its Opinion in the first suit (R. 83a).

Turning then, to the petition for certiorari, petitioners' basic claim is that they have been deprived of their day in court, and they assert that the validity of this claim is to be measured solely by a comparison of the initial pleading in each lawsuit. Such a contention is completely without merit. As the facts set forth above make clear, the Stevenson family has had its day in court. After a trial lasting 24 days, the trier of fact found that the Stevenson family had not acquired title to the tract by adverse possession. The interests of the entire Stevenson family were fully and adequately represented in this first lawsuit, a suit in which the entire family participated. Under familiar principles of law, the prior judgment in that suit bars Stevenson and his privies from bringing this second suit. As this Court said in **Commissioner v. Sunnen**, 333 U. S. 591, 598 (1948):

> "* * * matters which were actually litigated and determined in the first proceeding cannot later be relitigated. Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel. * * *"

Certainly no serious questions of denial of due process arise from this simple application of basic principles of the common law. Nor does this case fit any of the standard criteria which this Court uses in determining whether it should devote its valuable time to consideration of a case on the merits. To the contrary, the basic controversy here was factual in nature. In the first suit, two courts considered every contention at length and rejected the claim of adverse possession. No application for certiorari was made from the decision of the Supreme Court of Pennsylvania

in that action and, had such an application been made, review on these factual issues would have been barred by the "two-court" rule. **Pick Mfg. Co. v. General Motors Co.**, 299 U. S. 3 (1936). Instead, a collateral attack has been launched in the form of this second suit, clearly barred by the principle of *res judicata*. In Pennsylvania, as in all jurisdictions, the doctrine is designed to prevent the relitigation of causes which have been thoroughly considered and put at rest by the final judgment of a court of competent jurisdiction. As this Court said in **Stoll v. Gottlieb**, 303 U. S. 165, 172 (1938): "* * * It is just as important that there should be a place to end as that there should be a place to begin litigation * * *."

CONCLUSION.

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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